

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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PLR-142670-14

Date:

May 01, 2015

Legend

Taxpayer:

Year 1:

State A:

Office:

Individual:

ManagementCo:

Business Affiliate:

CPA 1:

CPA 2:

Date A:

Date B:

Date C:

Date D:

Date E:

Month A:

Dear :

This is in response to a request submitted on behalf of Taxpayer for a ruling granting an extension of time for making the election under section 831(b) of the Internal Revenue Code pursuant to section 301.9100-3 of the Procedure and Administrative Regulations, to be effective for Year 1.

The ruling contained in this letter is based upon information and representations Taxpayer submitted, accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the ruling request, and it is subject to verification on examination.

FACTS

Taxpayer represents that it was established and licensed in State A on Date A to issue various property and casualty insurance contracts specifically related to actual net loss policies that cover risks associated with enterprise risk exposure pursuant to the laws of State A on Date A. Taxpayer is not required to file a National Association of Insurance Commissioners (NAIC) annual statement with State A or any other state. Taxpayer files a State A annual report which is filed with State A Office. Taxpayer represents that it qualifies as an insurance company for federal income tax purposes, making it eligible to have the option to elect to be taxed pursuant to section 831(b).

Individual owns Taxpayer. Taxpayer's business affairs are controlled by its board of directors. Taxpayer has no employees. Taxpayer relies on ManagementCo for certain management, administrative services and accounting services, as well as the preparation of statistical reports. Taxpayer also hired independent legal and actuarial counsel and an outside certified public accountant (CPA) to provide other required insurance regulatory and tax services.

Taxpayer engaged CPA 1 to assist with all of its federal tax filings. Prior to Date B, CPA 1 filed the Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns on behalf of Taxpayer for tax Year 1. In late Month A, Individual notified CPA 1 that their services were no longer needed. On Date C, someone from ManagementCo called Business Affiliate of Taxpayer to verify Taxpayer filed a Form 1120 PC for Year 1. Business Affiliate was not aware of the Date D deadline. Subsequently, CPA 2 was hired. CPA 2 filed Taxpayer's Form 1120 PC for Year 1 on Date D.

The following representations are made in connection with the request for the extension of time.

1. The request for relief was filed before the Internal Revenue Service discovered the failure to make the regulatory election.
2. The granting of relief by the Internal Revenue Service will not result in a lower tax liability than Taxpayer would have had if the section 831(b) election was timely made.
3. Taxpayer does not seek to alter a return position for which the accuracy related penalty has been or could have been imposed under section 6662 at the time Taxpayer requested relief, and the new position requires or permits a regulatory election for which relief is requested.
4. Taxpayer failed to file the election inadvertently. Taxpayer has not used hindsight to seek an extension of time to make the election. Taxpayer always had the intent to make the section 831(b) election. Taxpayer was advised by tax professionals regarding making the section 831(b) election and the timely filing of Form 7004.

LAW AND ANALYSIS

Insurance companies other than life insurance companies are taxable under section 831. However, certain insurance companies can elect to pay an alternative tax provided in section 831(b) on only their taxable investment income. Section 831(b)(2)(A)(ii) requires that a company elect the application of the alternative tax imposed by section 831(b). Pursuant to section 301.9100-8(a)(2)(i), this election must be made by the due date (taking into account any extensions of time to file obtained by the taxpayer) for the first taxable year for which the election is effective.

Under section 301.9100-1(c), the Commissioner may grant reasonable extension of time pursuant to section 301.9100-2 and 301.9100-3 to make a regulatory election (but no more than 6 months except in the case when the taxpayer is abroad), under all subtitles of the Code except subtitles E, G, H and I. Section 831(b) is part of subtitle A.

Section 301.9100-3 provides that requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 (automatic extension) must be made pursuant to section 301.9100-3. Under section 301.9100-3(a), relief will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

Under section 301.9100-3(b)(1), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer: (i) requests relief under this section before the failure to make the regulatory election is discovered by the Internal Revenue Service; (ii) failed to make the election because of intervening events beyond the taxpayer's control; (iii) failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; (iv) reasonably relied on the advice of the

Internal Revenue Service; or (v) reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer and the tax professional failed to make or advise the taxpayer to make the election.

Under section 301.9100-3(b)(2), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

Under section 301.9100-3(c)(1)(i), the interests of the government are not prejudiced if the tax liability in the aggregate for all taxable years affected by the election will not be lower by granting the relief than if the election had been timely made (taking into account the time value of money). Section 301.9100-3(c)(1)(ii) provides that the interests of the government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable years that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based solely on the facts submitted and the representations made, we conclude that the requirements of sections 301.9100-1 and 301.9100-3 have been satisfied. Taxpayer requested relief under these provisions before the failure to make the regulatory election was discovered by the Service, and Taxpayer reasonably relied on a qualified tax professional. Further, the interest of the government will not be prejudiced by granting relief.

RULING

Taxpayer is granted an extension of time until 90 days following the date of this letter to make the election to be subject to the alternative tax provided in section 831(b)(2)(A) for Year 1.

CAVEATS

Notwithstanding that an extension of time is granted under section 301.9100-3 to make an election under section 831(b)(2)(A), additions, penalties and interest that would otherwise be applicable, if any, continue to apply with respect to the tax return for Year 1.

No ruling has been requested, and no opinion is expressed (or implied) whether Taxpayer is engaged in the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies; or whether Taxpayer qualifies as an insurance company under section 831(c) for Year 1.

A copy of this ruling letter should be attached with Taxpayer's federal income tax return.

This ruling is directed only to the taxpayer who requested it. Section 6110 (k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file in this office, a copy of this ruling is being furnished to your authorized representative.

Sincerely,

Sarah E. Lashley
Assistant to the Branch Chief, Branch 4
Office of Associate Chief Counsel
(Financial Institutions & Products)

cc: